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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,838	03/22/2001	Michael B. Marks	IRD-1	3150

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07/29/2004

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EXAMINER

CHAMPAGNE, DONALD

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/813,838

Applicant(s)

MARKS ET AL.

Examiner

Donald L. Champagne

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-22-01.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Support of Registered Attorney or Agent*

1. While an inventor may prosecute the application, it is the USPTO's experience that lack of prosecution experience usually acts as a liability in affording the maximum protection for the invention disclosed. The Office recommends that applicant consider securing the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skillful preparation and prosecution.
2. The following sources are available for selecting an Attorney or agent.
  - (A) Applicant can search the roster of attorneys and agents at the Office's home page, <http://www.uspto.gov>. Click on "Site Index" at the top of the home page. Then, in the alphabetical list, click on "Agent and Attorney Roster". Then click on "Attorney/Agent Search".
  - (B) Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

### *MPEP*

3. All the US patent laws and rules of examination are in the *Manual of Patent Examining Procedure*, 8<sup>th</sup> edition, which is available through the Office's web site, <http://www.uspto.gov>. Click on "Site Index" at the top of the home page. Then, in the alphabetical list, click on "Manual of Patent Examining Procedure (MPEP) Information Page". The next page gives instructions for viewing individual chapters and parts of the Appendix in .pdf format and for purchasing a paper copy of the MPEP.

### *Certificate of Mailing*

4. It is called to applicant's attention that if a communication is deposited with the U. S. Postal Service and mailed to the Office by First Class Mail before the reply time has expired, applicant may submit the reply with a "Certificate of Mailing" which merely asserts that the

Art Unit: 3622

reply is being mailed on a given date. So mailed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
on \_\_\_\_\_ (date).

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Additional useful information on communicating with the Office is contained in 37 CFR 1.10 (*Patent Rules, Appendix R of the MPEP*).

### ***Claim Objections***

5. The claims are objected to because the lines are crowded too closely together, making reading and entry of amendments difficult. Rule 37 CFR 1.52 (*Patent Rules, Appendix R of the MPEP*) requires 1-1/2 or double spacing of the application and any amendments. However, for purposes of initial examination, the examiner has accepted the specification and claims as filed. Applicant is cautioned that future submissions to the Office must comply with 37 CFR 1.52.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being obvious over Logan et al.

Art Unit: 3622

8. Logan et al. teaches (independent claims 1, 11 and 14) a method for payment for audio content received by an Internet radio device (col. 6 lines 44-47) wherein content is requested by the user of the device (col. 7 line 51) and the content is included in a process of message assembly (col. 7 lines 8-50 and col. 8 lines 8-12) where the content is divided into portions (*programmed sequences*) and subscriber's may set a player system variable to a value to indicate the subscription costs per unit time that they are willing to accept (col. 10 lines 30-33), which reads on a value is established for each portion of the content; a payment message is attached to each portion of the content (col. 10 lines 15-27), the payment message being at least one of an advertising message and a fee message; the payment message and attached portion of content comprising an assembled message, a sequence of at least portions of the content being made audible to the user by the device (col. 1 line 33), and a user account produces billing charges to subscribers (col. 16 lines 3-4), which reads on a user account records a cost for a total value of the portions of content that are delivered.
9. Logan et al. does not teach sending a plurality of assembled messages sequentially to the device. Because some customers would like to have their *programmed sequences* broken into smaller sequences for purposes of estimating cost, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to send a plurality of assembled messages sequentially to the device.
10. Logan et al. also teaches at the citations given above claims 2, 5-9, 13, 17 and 18.
11. Logan et al. also teaches: claim 3, because the user chooses, within limits, to the quantity of advertising to be presented to the user (col. 9 lines 36-42); claims 12 and 15 (col. 22 lines 11-20), where the *ChargeLevel value* is the selecting element, and claims 4, 19 and 20 because the system sets the advertising messages delivered to maintain the selected *ChargeLevel value* (also see col. 10 lines 33-36), and claims 10 and 16, because giving a fee message to increase the *ChargeLevel value* is an instruction to reduce the number of ad messages , which reads on deleting and advertising message.

***Special Note for Applicant Pro se<sup>1</sup>***

12. In this Office action the examiner has judged the claims on their face (prima facie) to be non-patentable, because they are taught by or obvious from Logan et al. If applicant disagrees with the examiner's judgment, applicant should respond by filing arguments explaining, as precisely as possible, where the rejection in para. 7-11 above is wrong. In doing so applicant should recognize that the entire reference is available to support the rejection, not just the sections cited above by the examiner. Applicant should also recognize that MPEP § 2111 and 2111.01 require the examiner to give claims language its "broadest reasonable interpretation" unless applicant has provided a "clear definition" of the terms in the specification. Hence, if applicant believes the examiner's implicit interpretation is wrong, applicant should explain where a "clear definition" of the term(s) appears in the specification.
13. Applicant may also amend the claims to overcome the rejection. Applicant can do so in the current application only if the amending matter is presented in the current application. A "new matter" rejection will result if the examiner cannot find the material in the specification. Hence, it is to applicant's advantage to point out where in the disclosure the amending material appears. Amendments must be made consistent with the requirements of 37 CFR § 1.52, which is in Appendix R of the MPEP cited above.
14. Applicant is entitled to contact the examiner to schedule a half-hour "interview" with the examiner to discuss the application, which may be done by telephone or in person, as applicant chooses.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.

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<sup>1</sup> An applicant representing himself or herself, without benefit of a patent agent or attorney.

Art Unit: 3622

16. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.
17. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.



Donald L. Champagne  
Primary Examiner  
Art Unit 3622

24 July 2004